

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-777/ND/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s SHIVALIK PACKING INDUSTRIES

...Applicant/Operational Creditor

VERSUS

M/s JIYA AGRO PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 29.08.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Counsel for the Applicant

For the Respondent:

MEMO OF PARTIES

M/s SHIVALIK PACKING INDUSTRIES

Having its registered office at:
Flat-102, Geeta Bhavan,
15 A, NWA, Punjabi Bagh West,
New Delhi-110026

...Applicant/Operational Creditor

VERSUS

M/s JIYA AGRO PRIVATE LIMITED

Having its registered office at:
17, 3 Floor, Rampuri,
Kalkaji, South Delhi,
New Delhi-110019

...Respondent/ Corporate Debtor

ORDER

PER- SHRI HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Shivalik packaging Industries (for brevity 'Applicant') through its proprietor Mr. Anand Dalmia, with a prayer to initiate the Corporate Insolvency process against M/s Jiva Agro Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely, M/s Shivalik Packaging Industries is a proprietorship concern with PAN No. ACUPK1025B, having its registered office at Flat-102, Geeta Bhawan, 15A, NWA, Punjabi Bagh West, New Delhi-110026.
3. The Respondent, the Corporate Debtor namely M/s Jiya Agro Private Limited is a company incorporated on 18.10.2012, under the provisions of Companies Act, 1956 with CIN No. U51219DL2012PTC243800, having its registered office at 13, 3 Floor, Rampuri, Kalkaji, South Delhi, Delhi-110019
4. The Authorised Share Capital of the respondent company is Rs. 25,00,000/- and Paid Up Share Capital of the company is Rs. 2,77,700/- as per Master Data of the company.

5. It is the case of the applicant that Respondent company approached the applicant for purchase of jute and PP bags, as and when required by Corporate Debtor for packaging and supplying of its products to its customers. The Applicant supplied the goods as per the orders placed by corporate debtor and raised running invoices against the said supply and consequently payments used to be credited to the account of the Operational Creditor.
6. The applicant further states that, 10 tax invoices were sent to and duly acknowledged by the Corporate Debtor two cheques were issued as part payments by the Corporate Debtor. Last payment was made on 09.08.2018 by the Applicant. Two payments made subsequently through cheques amounting to Rs. 2,00,000/- and Rs. 5,00,000/- dated 23.10.2018 and 15.11.2018 respectively bounced due to insufficient funds. Even after repeated reminders, the Corporate Debtor has failed to make payment of Rs. 19,89,708/- in lieu of the invoices issued.

7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 17.12.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire outstanding payments of Rs. 19,89,708/- (Rupees Nineteen Lakhs eighty Nine Thousand Seven Hundred and Eight Only) the principal outstanding amount along with interest of Rs. 2,89,891/- (Rupees Two Lakhs Eighty Nine Thousand Eight Hundred Ninety One Only) at the rate of 24% per annum, the total amount being Rs. 22,79,599/- (Rupees Twenty Two Lakhs Seventy Nine Thousand Five Hundred and Ninety Nine only) inclusive of interest at the rate of 24% per annum, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
8. The applicant has annexed postal receipts and tracking report of service of section 8 notice, showing the delivery status as “Item Delivered”.

9. Despite the demand notice sent under Section 8 of the Code, the Respondent has failed to pay the amount demanded neither raised any notice of dispute nor replied to the said notice, hence this application, seeking to unfold the process of CIRP.
10. The applicant has stated that total debt due and payable is Rs. 19,89,708/- (Rupees Nineteen Lakhs eighty Nine Thousand Seven Hundred and Eight Only) the principal outstanding amount along the interest is Rs. 2,89,891/- (Rupees Two Lakhs Eighty Nine Thousand Eight Hundred Ninety One Only) at the rate of 24% per annum.
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP the applicant has also filed affidavit of dasti service wherein he states dasti service has been conducted and notice issued by this Hon'ble Tribunal has been delivered against proper receiving of the corporate Debtor.
12. In spite of dasti service of application under section 9, none appeared for the corporate debtor nor is any reply filed.

13. This Tribunal is constrained to proceed with the matter ex-parte against the Corporate Debtor as per order dated 26.08.2019 since the Corporate Debtor has not appeared though Section 8 notice and the present application were duly served on the Respondent and proof of service is filed by the applicant.
14. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
15. The applicant has attached the copy of Bank statements issued by Punjab National Bank in compliance with the requirement of Section 9(3)(C) of the IBC 2016.
16. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. On perusal of the record it is clear that the default has occurred on 20.03.2018. Hence, the claimed is not time barred. And the present application is well within the limitation period.

18. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
19. The Applicant has proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Rakesh Kumar Jain having registration no. IBBI/IPA-001/IP-P01297/2018-19/12068 and email address rajeshjainca@rediffmail.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of

the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

21. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

(SHRI HEMANT KUMAR SARANGI)
MEMBER (Technical)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (Judicial)